Jonks & Catel Ltd., Nos. 12 to 15, the yard and the way leading to the yard from Gower Street, who contended that the plaintiff had only a right of access to the back of No. 16 over the way coloured green and four feet wide, and erected a fence to prevent access for vehicles from Gower Street. The plaintiff claimed that on the true construction of her conveyance, she as owner of No. 16 had a right of way for vehicles from Gower Street to the back of her premises.

The Court of Appeal, reversing Russell J. in the court below, held that the right claimed passed to the plaintiff by virtue of section 6(2) of the Conveyancing Act, 1881, there being no unequivocal "contrary intention" expressed in the deed of conveyance within the meaning of section 6(4) of the Act, sufficient to negative the passing of such right. In their judgment all the three appellate judges observed that the maxim "*expressio unius exclusio alterius*" should be regarded as not a rule of law but a canon of construction to be applied in appropriate cases. In deciding the issue before the court Pollock M.R. said at page 528: —

"I think that the right way in which to approach this conveyance is to bear in mind, as has been said in the other cases, the circumstances and facts existing at the time and what was the privilege being enjoyed, and then to remember that subsection 2 would carry in the conveyance those privileges and advantages which were at the time of the conveyance enjoyed, and finally to see whether or not it is necessary to exclude them having regard to the terms of the conveyance."

In the present case the subject-matter of the conveyance was property vested in the personal representative of the estate of a deceased which was sold in the course of administration by the personal representative to the appellants. No. 81A Duku Road is an outhouse. Section 6(2) of the Conveyancing and Law of Property Act would carry in the conveyance all outhouses which were at the time of the conveyance "occupied or enjoyed with, reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed". Bearing in mind these circumstances and facts and the provisions of section 6(2) which would carry in the conveyance all outhouses enjoyed with or appurtenant to, the land houses or other buildings conveyed, it appeared to me impossible on the true construction of the conveyance to find that a contrary intention within the meaning of section 6(4) has been expressed in the conveyance that section 6 shall not apply merely because the draftsman has elected to include houses expressly in the conveyance and because the appellants were at all material times aware of the existence of the outhouse.

For these reasons the appeal was allowed.

Appeal allowed.

Solicitors: *Laycock & Ong; Yap Kim Cheng & Co.*

LEE YEW HOE v. LEE BOCK HUAT

[O.C.J. (Sinnathuray J.) September 19, 1980]
[Singapore — Suit No. 675 of 1979]

Tort — Negligence — Road accident — Breach of duty of care while making U-turn.

Damages — Leg-amputation — Criteria for assessment — Change in social and economic conditions.

In June 1978 the plaintiff while riding his motorcycle on a narrow two way road met with an accident when a lorry driven by the defendant in breach of his duty of care to the users of the said road came into the said road to make a U-turn, collided into the motorcycle and injured the plaintiff. As a result of his injury the plaintiff underwent an above knee amputation of his right leg. At the time of the accident the plaintiff was 17 years of age and was employed as a bakery assistant at $300 per month. He had been in such employment since December 1977.

Held: (1) on the evidence adduced the defendant was wholly liable for the accident;

(2) in deciding this case earlier cases were not altogether helpful because they were decided more than 10 to 15 years earlier when social and economic conditions in the country were quite different from what they are today;

(3) taking the factors mentioned above into account the plaintiff should be awarded $40,000 as general damages and $56,124 for loss of future earnings.

Cases referred to:-

(1) *Lee Song Seng* v. *Leong Hup Transport Co. & Anor.* [1975] 2 M.L.J. ii.

(2) *Liew Kwee Chin* v. *Hong Huat Timber Trading Co.* [1979] 2 M.L.J. cxxxix.

CIVIL SUIT.

R. Murugason for the plaintiff.

Joe Chellam for the defendant.

Cur. Adv. Vult.

Sinnathuray J.: On June 24, 1978, at about 4.20 p.m., the plaintiff was riding motor cycle, AU 75L, along Jalan Tiga Ratus. The road is a narrow two-way road, about 14 feet wide, and is off Changi Road. The plaintiff who had come from Upper Changi Road, after work, was on his way home to No. 231A at Jalan Tiga Ratus. According to him, he was travelling at about 30 kmh, and kept to his left, about 2 feet from the edge of the road.

An accident then occurred. Motor lorry, YB 679, driven by the defendant, came from an unnamed earth road to the right of the plaintiff and collided into the motor cycle. The front bumper of the lorry hit the off-side of the petrol tank of the motor cycle and the right leg of the plaintiff. The over-rider of the bumper damaged the seat of the motor cycle. The plaintiff was thrown to the left on to the grass verge, and the motor cycle fell on its nearside near the edge of the road.

The defendant was on that day engaged in earth works at a site close to the scene of the accident. At the material time, he had dumped earth at the entrance to the earth road. His version of the accident was that he drove out of the earth road onto Jalan Tiga Ratus to make a U-turn. The front of the lorry was almost at the centre of Jalan Tiga Ratus. It was then that he saw the motor cycle, and stopped. The motor cycle collided into the front off-side bumper of the lorry. After the collision it went on to the right of

the lorry and fell on its off-side near the edge of the road. The rider fell on the grass verge, about 14 feet in front of the lorry.

In cross-examination, the defendant said the first time he saw the motor cycle was when it was about 100 feet away from him. At that time it was travelling in the centre of the road and he was facing it. But he said he had no time to sound his horn. More damaging was his admission, more than once, that he did not actually see the impact. He said it was only after the collision when he got down from the lorry and saw some paint on the off-side front bumper that he gathered the point of impact was at that place.

The final account of the defendant of how the accident occurred is best described in his own words:

"The first time I saw the motor cycle was after it had come round the bend in the road which I estimate as 100/150 feet ... At that time the motor cycle was travelling in the centre of the road. I did not pay attention whether it was on its side or its wrong side of the road. At that time the front of my lorry was on the road. At that time I was facing the motor cyclist. How the motor cycle came and collided with the off-side of the front of my lorry, I cannot say because I did not see it.... After the collision the front of my lorry was almost in the centre of the road. I am saying that the accident occurred somewhere near the centre of the road."

On the evidence of the defendant which I have narrated in some detail, it is clear that he had left the unnamed earth road and got onto the main road without first ascertaining or ensuring that it was safe for him to do so. He had therefore failed to keep a proper look-out or have sufficient regard for traffic that might reasonably be expected to be on Jalan Tiga Ratus. In this context, it is to be noted that he did not have a lorry attendant with him. In breach of his duty of care to the users of the said road, in coming into the said road to make a U-turn, the defendant had not only failed to see the plaintiff to avoid the accident but he had also encroached into the path of the plaintiff and collided into the motor cycle and injured the plaintiff. For these reasons, the defendant is wholly liable for the accident.

In leaving the issue of liability, I must say something on the two sketch plans tendered at the hearing. The police sergeant, S. Omar, who went to the scene and drew the plan and took the measurements, is dead. The sketch plan, AB17, is a reproduction of the plan drawn and the measurements noted by the said sergeant in his Field Book. The other sketch plan, AB18, is a plan drawn at the station from the Field Book. Both the sketch plans are misleading. But I have no reason to reject the measurements.

A submission for the defendant is that the sketch plan shows that the motor cycle was somewhere in the middle of the road and it is said that that evidence is at variance with the evidence of the plaintiff. That is true. But the evidence in the sketch plan is also at variance with the evidence of the defendant. Both of them, plaintiff and defendant, are in agreement that the motor cycle came to a rest somewhere near the edge of the road. The explanation may well be that the plaintiff and the defendant was wrong in their assessment of distances when they said that the motor cycle came to rest "near the edge of the road". But the measurements in the sketch plan are not inconsistent with the evidence of the plaintiff as to how the accident occurred. On the other hand, the defendant's version bears no correlation to the said measurements. For this reason, too, I reject the evidence of the defendant.

I now turn to quantum. Except for loss of earnings, special damages are agreed at $1,494.70.

Five days after the accident, on June 29, the plaintiff underwent an above knee amputation of his right leg. It was necessitated because within a matter of hours after he was admitted into hospital the leg became gangrenous. He then had intensive rehabilitation and was discharged from the hospital on August 15, 1978. He now has an artificial limb. He also uses crutches.

At the time of the accident, the plaintiff was 17 years of age. He was employed as a bakery assistant. Mr. Foo Kok Gin, the managing partner of the bakery said that the plaintiff commenced employment on December 1, 1977 at $260 per month; that he was a good worker; that his salary was increased; and that at the time of the accident, he was earning $300 per month. Mr. Foo also said that had the plaintiff not met with the accident, he would now be earning in the region of about $600 per month.

For the defendant, Mr. Chellam submits that damages for the amputation suffered by the plaintiff should not be more than $35,000. He has referred me to a Singapore decision, *Lee Song Seng* v. *Leong Hup Transport Co. & Anor.*,[1] where a lorry driver's left arm was amputated above the elbow and damages was given in the sum of $32,000. It is because counsel was relying on this authority that he obtained from the orthopaedic surgeon evidence that the loss of an arm is of greater disability to a person than the loss of a leg. I will not comment on that evidence, as I am going to rely on another authority to found my decision.

As regards the heading, loss of earnings, it can be divided into two parts, (a) loss of wages, and (b) loss of future earnings. There is no dispute between the parties on loss of wages. I can fix the amount, calculated from the time of the accident to date, 27 months at $300 per month, at $8,100.

As for future loss of earnings, I accept the submission for the defendant that to arrive at a figure I must properly take into account factors like, normal vicissitudes of life, that the plaintiff may not live to a ripe old age, and therefore, the average span of life, that the plaintiff is getting a lump sum, his employment prospects and his age. Then again, as is submitted for the plaintiff, there is the cost of living, and there is inflation: see the yearly recommendations of the National Wages Council for increase of salaries for workers. I am therefore of the view that the earlier cases are not altogether helpful because they were decided more than 10 to 15 years ago when the social and economic conditions in the country, were quite different from what they are today. Then also, admittedly, because of the amputation, the plaintiff is deprived of some of the amenities of life, like participating in games or sports, or being able to ride his

motor cycle. There are also restrictions as to employment. Taking all I have said, a reasonable balance has to be struck.

Mr. Chellam submits that future loss of earnings be calculated on a monthly loss of income of between $100 and $200, and, the plaintiff, being 19 years of age, a multiplier of 30 or 31 years be used.

For the plaintiff, I have the benefit of a written submission in which are given a number of past awards of general damages for loss of a leg. In my view, for the reasons I have given, the best is the latest, *Liew Kwee Chin* v. *Hong Huat Timber Trading Co.*[2] In this case Kulasekaram J. awarded $35,000 to the plaintiff, a lorry driver, who lost his leg as a result of an accident in a timber yard. It was an injury suffered in 1975. For the plaintiff's injury in 1978, taking the factors I have mentioned into account, I award $40,000, as general damages for the amputation of the right leg.

As regards future loss of earnings, counsel for the plaintiff urges upon me to take 34 years of purchase, and, notwithstanding that the plaintiff must mitigate his damages, that I compute the loss of monthly income at $300.

I am of the view that the future employment prospects for the plaintiff, despite his disability, are good. When he has adjusted his mental attitude to the disability which he has not yet accepted, he can earn reasonably good wages. But the disability does put the plaintiff at a disadvantage. That being the view I take, I accept Mr. Murugason's submission that the computation be at $300 per month, but as regards years of purchase, I accept Mr. Chellam's submission that it be 31 years.

There will be judgment for the plaintiff for special damages of $9,594.70 and general damages of $96,124, being $40,000 for loss of leg and $56,124 for loss of future earnings, together with costs and the usual consequential orders.

Claim allowed.

Solicitors: *Murugason & Co.; Joe Chellam.*

MALAYSIAN REPORTS

PUBLIC PROSECUTOR v. SIHABDUIN BIN HAJI SALLEH & ANOR.

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Syed Othman F.JJ.) July 3, 1979, June 23 & August 27, 1980]

[Kuala Lumpur — Federal Court Criminal Appeal No. 67 of 1977]

Criminal Law and Procedure — Security case — Whether court entitled to acquit accused at end of prosecution case on ground that prosecution had not proved a prima facie case — Essential (Security Cases) Regulations, 1975, rr. 3, 13, 14, 15 and 17 — Criminal Procedure Code (F.M.S. Cap. 6), s. 180.

In this case the respondents had been charged with offences under the Internal Security Act and tried in accordance with the Essential (Security Cases) Regulations, 1975. After the prosecution had closed its case, the learned trial judge acquitted and discharged the respondents on the ground that the prosecution had not proved a *prima facie* case. The Public Prosecutor appealed and relied on regulation 13 of the Regulations which reads:— "When the case for the prosecution is closed, the court shall call on the accused to enter on his defence."

Held, by a majority (Wan Suleiman F.J. dissenting): in a security case at the end of the prosecution case the court is not obliged to call on the accused to enter on his defence unless the prosecution has then proved a *prima facie* case against him.

Cases referred to:-

(1) *Johnson Tan Han Seng* v. *Public Prosecutor* [1977] 2 M.L.J. 66.

(2) *Public Prosecutor* v. *Chea Soon Hoong* Federal Territory Criminal Trial No. 23 of 1976 (unreported).

(3) *Public Prosecutor* v. *Yap Seng Keat* Federal Territory Criminal Trial No. 49 of 1976 (unreported).

(4) *Duport Steels Ltd.* v. *Sirs* [1980] 1 All E.R. 529.

FEDERAL COURT.

On July 3, 1979.

Sharkawi bin Alis (Deputy Public Prosecutor) for the appellant.

Tengku Suleiman ibni Sultan Ismail for the respondents.

On June 23, 1980.

Shaikh Daud bin Haji Mohamad Ismail (Deputy Public Prosecutor) for the appellants.

K. Pasupathy (*Victor Isaacs* with him) for the respondents.

Cur. Adv. Vult.

Suffian L.P. (delivering the majority judgment of the Court): The issue here is whether in a security case tried in accordance with the Internal (Security Cases) Regulations, 1975, ("the regulations"), when the prosecution has closed its case, the court is obliged to call on the accused to enter on his defence, even if the prosecution has not made out against him a case which, if unrebutted, would warrant his conviction.

This point was first argued before three of us, on July 3, 1979, when we reserved judgment. In the course of considering our draft judgment, we decided that it would be desirable to have a point of law of